# Commission on Victims in the Courts

## Friday, September 30, 2011 APPROVED - Minutes

10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 119 A&B

#### **Members Present:**

Hon. Ronald Reinstein (Chair)

Mr. James J. Belanger

Mr. Michael Breeze

Ms. Shelly Corzo

Ms. Sydney Davis

Ms. JoAnn Del Colle (telephonically)

Ms. Karen Duffy

Hon. Elizabeth Finn

Ms. Leslie James (telephonically)

Mr. Dan Levey

Ms. Keli Luther

Hon. Anna Montoya-Paez (telephonically)

Ms. Pam Moreton

Ms. Elizabeth Ortiz

Mr. Douglas Rayes

Hon. Antonio Riojas, Jr

Mr. David Sanders

Hon. Richard Weiss

#### **Members Absent:**

Hon. Peter Cahill

Dr. Kathryn Coffman

Cpt. Larry Farnsworth

Ms. Daisy Flores

Hon. Evelyn Marez

Hon. William O'Neil

Mr. Doug Pilcher

#### Staff:

Ms. Carol Mitchell Ms. Jerri Medina

#### **Presenters/Guests:**

Ms. Sydney Vivian, PSRB

Mr. Duane Belcher, Board of Executive

Clemency

Ms. Kim MacEachern, APAAC

Mr. Michael Durham - Lobbyist

Ms. Tammy Wray, Maricopa Public

Defender's Office

Ms. Jennifer Greene, AOC Asst. Counsel

## I. Regular Business

## A. Welcome and Opening Remarks

The September 30, 2011 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:03 a.m.

## B. Approval of May 20, 2011 Minutes

Minutes from the May 20, 2011 Commission on Victims in the Courts meeting were presented for approval.

**MOTION:** To approve the May 20, 2010 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.* 

## C. Approval of 2012 Meeting Dates

Meeting dates for 2012, Commission on Victims in the Courts meetings were presented for approval.

- January 20, 2012
- May 11, 2012
- September 14, 2012

**MOTION:** To approve the 2012 Commission on Victims in the Courts meeting dates as presented. *Motion seconded and passed unanimously.* 

### II. Announcements

## New Judge Orientation

Judge Reinstein thanked Keli Luther & Mike Piccarreta, Criminal Defense Attorney in Tucson for their presentation on victim issues and the law. Shelly Corzo also presented her experience as a crime victim and her impact statement at sentencing and was greatly praised by the judges.

## Clerks Association Meeting

The Clerks may be moving forward with a new legislative change regarding the definition of a victim in order to prioritize restitution payments to an individual private citizen victim before business entity victim and which restitution case payments will be paid first, i.e. current active cases vs. older cases.

## International Judicial Academy Program in the Hague

Judge Reinstein recently returned from a conference held in the Netherlands. He was amazed at the level of victim participation in the criminal tribunals of Yugoslavia, Rwanda, Sierra Leon and Lebanon, as well as the International Criminal Court. In all these courts, victims have "almost" become a party to the process with the ability of victim attorneys to examine and cross-examine witnesses. Victims can also do opening statements, and closing arguments, allowing for full victim participation.

### III. Presentations

## A. Psychiatric Security Review Board Information (PSRB)

Ms. Sydney Vivian has been with the PSRB since 1994. The Board is comprised of five board members: 1) Psychiatrist, 2) Psychologist, 3) Psychiatrist or a Psychologist, 4) lay member and 5) an individual experienced in Parole and Probation. The Board meets monthly and members have a term of four years, with most of the current board members having at least two terms of experience.

#### Handouts

- 1) Summary of PSRB population
- 2) AZ Statutes for PSRB

Victim information is provided by the county attorney's office and victims are notified by mail with a form to opt in to receive notification of all hearings, once an individual enters the Arizona State hospital. Notification continues unless victims opt out.

PSRB held a meeting and seminar with victim advocacy groups, which has helped broaden the victim advocate knowledge base and understanding of the PSRB role.

Ms. Vivian provided an overview of PSRB's role with victims and victim advocacy groups and the procedures when putting an individual back into the community:

When an individual is sentenced to the jurisdiction of the PSRB, they are first placed in the hospital for an evaluation and are entitled to a hearing after 120 days; however it usually takes approximately one year for the evaluation process. Most hearings occur after the evaluation; however, the hospital can recommend a hearing at any time. After the hearing the hospital usually recommends a two-fold process:

- 1. Condition of release from the hospital, with a graduated pass formula. A recommendation of release with a supervised person such as a staff member of the hospital; later, release with family members, and then finally out on their own.
- 2. Once they have successfully completed the prior steps and the condition of release; the hospital will re-evaluate the individual and recommend a new condition of release. Conditions of release greatly depend on the patient and the crime.

Once the individuals are placed in the community they will have 30 days report to PSRB and the hospital. Individuals are followed by PSRB closely, for example: if they have moved and failed to notify PSRB; then PSRB will revoke their release. The Board is very strict on conditions of release.

Once out in the community for awhile, PSRB will hold hearings for an amendment to their condition of release. Victims are notified of all hearings, prior to their term expiring and the expected final hearing date.

If the individual needs to be civilly committed, PSRB will send a recommendation to the county attorney requesting civil commitment. The victim receives notice that the individual's term has expired and this concludes the process with PSRB.

Questions and discussion from the COVIC board members:

Is the term based on the classification and what the presumptive sentence is of that particular crime? If an individual is sentenced to the State Hospital due to being found guilty except insane; the Psychiatric Security Review Board maintains jurisdiction for the presumptive sentence and that does not include priors.

The law changed in 2004 and became effective in 2007, regarding these types of individuals that were still considered dangerous to others. Recently, more minute entries indicate, if an individual is no longer SMI (Seriously Mental III), they are to finish out their term by returning to the Department Of Corrections. PSRB transferred the first individual to DOC in July 2011 since this law went into effect.

Is there a notification to the victim on a weekend pass? As long as the individual is in the hospital the victim will receive all notifications on all passes including 3-hour, weekends and long-term passes.

Can the judge only impose a presumptive sentence if the individual is found guilty except insane? Yes, except if it's a life sentence. Also, judges do not have to give individuals pre-sentence incarceration credit for the hospital stay.

Does the Board determine the finding of incompetence? No, most individuals will go into the hospital for a 75-day evaluation and the submission for finding will to be sent to the judge. A conviction occurs by either jury trial or a submission which is tantamount to plea, or through mental health records. The judge makes the finding that they are quilty except insane.

Is there a written statute for written notice to a victim? If shorter than five days, the victims are called directly. Written notice is provided for hearings within 20 days.

Keli Luther expressed her appreciation for the information and was glad to hear that notification is getting better because about 8 years ago there were problems with lack of notification and supervision on some of the field trips.

Ms. Vivian remarked that recently, hospitals have clamped down on passes, especially self-passes. However, some patients have done well and have functioned to the point of holding a job for several years.

## B. Board of Executive Clemency and Victim Rights

Mr. Duane Belcher, Executive Director of the Board of Executive Clemency has been with the board since 1992, and has chaired the board since 1996. Mr. Belcher provided two handouts:

- 1) History of the Board of Executive Clemency
- 2) 403 Clemency and commutation and reapplication

He explained the Board of Executive Clemency still functions as the Board of Pardons and Paroles for those offenders who committed crimes prior to January 1, 1994 and pointed out that a revised criminal code was instituted after 1994, known as "Truth in Sentencing".

General Parole is a conditional release, after the person has served the required amount of time by statute and they're certified eligible for Parole. The Parole Board holds a hearing to decide on the appropriateness of the candidate to receive parole. Notification to a victim is a 15-day notice by statute. Under the "old code – pre 1994", once an individual comes up on the 25 year mark of their sentence they will be eligible for a parole hearing every 6 months in which the victim will be noticed every time for the remainder of the individuals life in prison.

For persons sentenced between Jan '84 to Jan '94, under §41-1604.06(G), when a victim gives their impact statement at the Clemency Board hearings they can petition to change the defendant's period of parole hearings from every 6 months to up to 12 months. This allows the board to hear directly from the victim and if granted, the hearing schedule changes would be an internal board procedure.

There is also a mechanism in place where the convicted person can apply for a commutation of sentence, if they were sentenced after 1/1/1994. Two years after imprisonment if a person is "statutorily eligible", they can apply for executive clemency called a Commutation of Sentence. Currently, a backlog of over 900 clemency applications exists, due to reduced hearing schedule as a result of budget cuts.

A.R.S. §13-603(L) opens the door for an offender to apply for some kind of commutation of sentence. The 603(L) provision allows a judge to enter a special order at the time of sentencing when the judge finds that the mandated sentence is "clearly excessive". The convicted person would be able to ask for a lesser sentence within 90 days of entry into DOC. This is a tool for all judges to use to reduce the sentence. However, it still must go through clemency process with the Board and the Governor on the basis of merit.

Are the victims noticed in 603(L) cases? Are they allowed to be heard on the issue before the clemency board and do they understand why and what the process is for? 603(L) recommendation is done by the judge at time of the sentencing. The County Attorney's Office and victims are notified of the court proceedings and victims can be heard.

<u>403 handout about clemency and commutation and reapplication</u>. If a person is eligible, the sentence imposed by the court can be changed. Example: a person receives 25 years; once served 80% of the sentence is served, an application for clemency, called Commutation of Sentence, is available.

Post 1994 1<sup>st</sup> degree murder when it said, "sentence serving life is no less than 25 years and be eligible for release". They didn't define the word "release".

There has been a case recently where a defendant was allowed a new hearing based on the word "parole", used in his sentencing. However, when "Truth in Sentencing" went into effect and this eliminated parole altogether. We still have seen mention in minute entries and plea agreements "eligible for parole". The only mechanism to provide a shorter sentence is a commutation of sentence.

Would the Board consider any recommendations from a judge stating that this person should never be released? Yes, the board does receive those recommendations and does take it into serious consideration when recommending release. Victims can also give statements that can influence the release of a defendant. In some cases, advocating to the board for clemency (example of brothers, 1 was killed in accident).

What do we propose as a remedy to relief? The recommendation to inform judges, prosecutors and attorney's with a need to understand the law in regards to the elimination of parole. In the past the parole has been interchanged with commutation even though the law is not the same. There may be a need to recommend legislative changes to clarify the difference.

Is there a period of when a defendant waives their right to a parole hearing, they can reverse their cancelation? An individual has to waive or accept every hearing and it sometimes occurs on the hearing date.

#### C. Guilty Pleas/Factual Basis

This item was not discussed.

## D. Connecting the Dots/DV/Child Welfare

ASU sponsored a conference with the O'Conner House regarding domestic violence and child welfare or child maltreatment cases. Victim issues are clear in DV cases because victims are defined in criminal code. But in abuse and neglect cases, the children are victims also but are not necessarily defined in the criminal code. A contradictory issue exists between the abuse and neglect side where the policy is of family reunification, whereas the policy of the DV side is to protect the safety of the victim and children.

The child protective system does not have batterer intervention systems. When Child Protective Services (CPS) removes a child, it may re-victimize the child by removing them from the home or safety of one parent into an unknown environment.

Concern was also expressed by Judge Finn because of an increased number of women seeking protective orders in limited jurisdiction courts as a result of a CPS requirement. Victims bring in a checklist from CPS to obtain an order of protection so they can get their kids back. The O'Connor House is in the forefront of this issue and they should be able to set up a "best practices" going forward.

COVIC does not plan to take any action at this point, as the Committee on the Impact of Domestic Violence (CIDVC) and the O'Conner House may be best suited to address these issues.

#### **IV.** Old Business

### A. APAAC/Victim Identification Update -

COVIC dealt with the privacy issue of child victim identification in appellate court opinions over a year ago which became the impetus of additional work and recommendations to improve victim privacy. After Judge Reinstein presented COVIC's recommendation to APAAC, the group drafted the attached proposed guidance.

APAAC representatives Elizabeth Ortiz and Kim MacEachern shared that APAAC did consider the recommendation at a previous meeting and plans to adopt at their next meeting. Once voted on and approved, it will become an official guidance document of APAAC and will be distributed to the various prosecutorial offices. APAAC's legislative policy committee is looking into the idea of pursuing a statutory change to mandate these procedures instead of being a "guidance" document only. However, they will wait to see the outcome of the next item on the agenda.

#### V. New Business

#### A. Victim ID Protection Draft Rule Petition

Jennifer Greene, AOC legal counsel helped draft the rule petition on behalf of COVIC's previous recommendation. Some courts are currently using victim initials, but an actual policy does not exist. This proposal limits the use of initials in place of victim's names for all victims of sexual offenses and all minor victims in all case types. The process for the rule petition is that it will be vetted through other Supreme Court committees and submitted to the Arizona Judicial Council for approval to file by January 2012. Once filed, the petition would be open for public comments from other stakeholders.

Jim Belanger raised a concern about determining identification several years later if only initials are used in the court records. He had a scenario where he used records from 1978 to identify a victim who had later become a defendant in a capital murder case. His position is that there is a need to have some kind of mechanism that allows for retrieval of identifying information 10 to 20 years later. There needs to be some other system to be able to retrieve that information in a sealed file.

Keli Luther suggested that research should be done analyzing federal, juvenile and probation cases, where initials have been used for years. The name could be cross

referenced to find these files or through grand jury proceedings. There are other mechanisms, but its best left up to the victim to decide.

**MOTION:** To approve the proposed rule forward for further discussion as presented. *Motion seconded and passed unanimously.* 

The chair recommended this petition be sent through the committee process and then once it clears this process, we may implement a work group.

## VI. Workgroup Updates

## A. Restitution Workgroup - Approve restitution letters for web

Dan Levey explained the handouts provide information to victims for filing and releasing restitution liens and suggests these instructions go on the website. Dan also noted that the Gila County Attorney's Office (per Daisy Flores) will start filing restitution liens on behalf of the victims, at the time of sentencing, for all felony cases and certain misdemeanors.

**MOTION:** To approve posting instructions for restitution forms on how to file and release restitution liens on the Commission on Victims in the Courts Restitution website. *Motion seconded and passed unanimously.* 

#### VII. Call to the Public

Mike Durham is a registered lobbyist and gave a presentation on behalf of cold case victims. He has worked on the AG's Cold Case task force with Dan Levey and was also involved in the evidence retention preservation statute that resulted in legislation.

Mike contacted COVIC to speak on behalf of cold cases with the purpose of his testimony to make an appeal to COVIC and to assert the rights of cold case victims as defined by the AZ Constitution. His opinion was that courts should have influence over law enforcement's procedures in actively pursuing cold cases.

#### Discussion:

Judge Reinstein indicated that due to the nature of cold cases, where a case has not been filed in the courts, the courts do not have any jurisdiction.

## VIII. Adjournment

**MOTION:** To adjourn presented. *Motion seconded and passed unanimously.* The meeting adjourned at 12:12 p.m.